

**MISSISSIPPI CENTER FOR LEGAL
SERVICES**

CASEHANDLER STANDARDS

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Introduction and Statement of Purpose From The First Edition of Casehandler Standards for MCLS

The Casehandler Standards of MCLS have been developed and adopted in order to promote high quality legal services for program clients by stating minimum program expectations regarding client representation. The Standards provide a basis on which to evaluate casehandler performance in representing clients. They provide a foundation for consistent supervision to assist all casehandlers to develop to their full potential. The Standards will serve as a guide both for new and for experienced casehandlers regarding program norms and expectations.

The format in which these Standards are presented consists of a brief statement identified as a "Standard," followed by a discussion identified as "Commentary." Both the Standard and the Commentary state norms which are expected to be met by MCLS casehandlers.

In some cases, these Standards may be supplemented by more specific guidelines adopted by a unit in the context of the substantive work in which it specializes. Such guidelines may expand or supplement these basic Standards, but they do not supplant them.

When appropriate, the commentary to these Casehandler Standards cites pertinent ethical provisions as set forth in the Code of Professional Responsibility, as adopted in Mississippi. At times, for illustrative purposes, the commentary also cites the American Bar Association Model Rules of Professional Conduct, particularly where the Model Rules provide specific guidance or insight not offered by the Code. The enforceable ethical standard in Mississippi, however, is the Code of Professional Responsibility.

CLIENT RELATIONS

Topic Heading - Establishing an effective relationship with clients

Standard 1.1

STAFF MEMBERS SHOULD RELATE TO ALL CLIENTS AND APPLICANTS FOR SERVICE IN A WAY THAT PRESERVES CLIENT DIGNITY, THAT FOSTERS CLIENT CONFIDENCE AND TRUST IN THE CASEHANDLER AND IN THE PROGRAM AND THAT PROMOTES THE ESTABLISHMENT OF AN EFFECTIVE PROFESSIONAL RELATIONSHIP WITH EACH CLIENT.

Commentary:

Effective legal representation requires a relationship of mutual trust and candor between MCLS and its clients. To accomplish this all staff members must treat clients sensitively and courteously with the goal of promoting a positive professional relationship with the client. Staff members should be aware that a number of barriers may exist that may hinder the establishment of an effective advocate-client relationship. Some clients may mistrust and fear lawyers as part of a hostile and unfamiliar legal system or as part of a social services bureaucracy from which they are already alienated. Some may be intimidated by the "professionals" from whom they seek help. Others may misunderstand what constitutes a legal problem or what

remedies are available through the legal system.

Staff members should be aware of the importance of communicating in the client's primary language as an ingredient of establishing an effective professional relationship. Accordingly, staff are encouraged to develop such language skills whenever possible, and to utilize those that exist within the program. Sensitivity to cultural differences can often be as important to effective communication as language itself. The program, therefore, encourages its casehandlers to understand the cultural heritage of the client population.

The intake process is the client's first point of contact with the program. It is important, therefore, that the intake process demonstrate the program's respect for prospective clients, assure the confidentiality of our relationship with them and encourage active client participation in cases that are accepted. For this reason MCLS avoids methods such as long waiting periods which suggest a disregard for the client's time and personal feelings.

Staff members should be aware that their personal behavior or lifestyle may reinforce clients' apprehension or alienation. Employees shall dress and act appropriately at all times.

The program also should seek to preserve good will among those who are denied service. For this reason the program shall explain clearly and promptly the reasons for rejecting a case. Applicants who desire a review of the decision also shall have immediate help to pursue their grievance. To the degree possible, the program refers rejected applicants to other sources of assistance.

Topic Heading: Establishing a clear mutual understanding - Retainer agreements Standard 1.2

A RETAINER AGREEMENT SHALL BE SIGNED WITH EACH CLIENT IN ORDER TO ESTABLISH A CLEAR MUTUAL UNDERSTANDING REGARDING THE SCOPE OF THE REPRESENTATION, THE RELATIONSHIPS OF THE CLIENT, THE PROGRAM AND THE CASEHANDLER, AND THE RESPONSIBILITIES OF EACH. EACH CASEHANDLER MUST SEEK TO MAINTAIN A CLEAR UNDERSTANDING WITH EACH CLIENT THROUGHOUT THE REPRESENTATION.

Commentary:

A written retainer agreement will be entered into with each client whom the program agrees to represent. In the professional relationship with the client, trust and openness will be enhanced if the expectations of the program, the casehandler and the client are clear at the outset. As the case proceeds, further written statements of understanding may be useful to make clear the expectations and obligations of each party.

In emergency situations, representation should not be delayed or denied because no retainer agreement has been signed. The retainer should be signed, however, as soon as practicable after representation is undertaken. No retainer agreement is required if the client only receives brief service or advice.

It is important to be clear who the client is. In complex situations involving numerous family members or involving groups, the casehandler and client need to agree at the outset on who has power to decide what action to take to avoid unexpected and possibly unethical conflicts.

At times individuals may contact the program on behalf of persons who because of a disability or for some other reason cannot contact the program themselves. At such times, it may be unclear whose interests the program is being asked to protect. It is crucial in such circumstances to be aware that the interests of the person contacting the program may be adverse to those of the person under a disability. If they are, then it must be absolutely clear whom the program is being asked to represent and who qualifies as a client. If the disabled person is the client and there is a real or potential conflict of interest, alternative means of establishing contact with the client should be found. (See Rule 1.14 of the Mississippi Rules of Professional Conduct).

The client and casehandler should agree regarding the responsibilities each has in the case. The casehandler must make certain at the outset of representation that the client understands any limitations on the scope or nature of representation that will be provided. A client may have a number of legal problems, for example, but the program may have agreed to handle only one. (See Rule 1.2 of the Mississippi Rules of Professional Conduct). The casehandler should be certain that the client understands that the program acceptance of the case does not automatically mean it will handle an appeal.

The client and the casehandler should both understand that the confidentiality of the information the client provides will be protected consistent with the program's and the casehandler's ethical obligations. (See Standard 1.3, Rule 1.6, Mississippi Rules of Professional Conduct). Clients should understand that under LSC restrictions, the program cannot claim, or collect attorney fees. That if the program seeks attorneys' fees, the program may retain those fees.

Clients should be encouraged to initiate appropriate contacts with the casehandler and should know how to do so. They should recognize the importance of keeping the program informed of changes in circumstances affecting the case and advising them of their whereabouts so that they may be contacted easily when necessary. Clients should understand their responsibility to assist in preparing the case by locating witnesses, documents, or physical evidence; cooperating with discovery requests; and keeping records. The fact that a client is unable to cooperate in preparing the case is not a reason to deny the client representation.

Topic Heading: Preservation of confidences

Standard 1.3

CONSISTENT WITH ETHICAL AND LEGAL RESPONSIBILITIES, EACH CASEHANDLER MUST PRESERVE INFORMATION RELATING TO REPRESENTATION OF A CLIENT FROM UNAUTHORIZED DISCLOSURE.

Commentary:

The attorney-client relationship depends upon the free and candid flow of information between client and casehandler. This will occur only if clients are certain that the information they provide will be protected from unauthorized disclosure. Each staff member has a duty to assure that information from applicants and clients is kept confidential at all times. (See, Rule 1.6, Mississippi Rules of Professional Conduct).

Maintenance of client confidentiality requires attention to practical concerns. Files must never be left exposed on any desk that is in a public area or in an area where confidential information (including client identity) may be disclosed to other than program personnel. Confidential client information such as telephone numbers and addresses must never be written on the outside cover of a case file. Clients must never be interviewed in any public area, such as the waiting room. Receptionists and secretaries must not announce a client's name or other identifying information so that persons not employed by the program may hear. Except as authorized by the client, the fact that the program is representing a client must not be disclosed, except to the extent to which such disclosure is necessary to pursue the client's objective.

Program personnel, including volunteers, must be particularly sensitive to the inadvertent disclosure of confidential information in casual conversation inside and outside the office. Client cases must never be discussed among program staff when there may be other clients or non-program personnel present. Social gossip about clients must be avoided.

Information regarding a client or an applicant may never be released at the request of a funding source, or other outside agency. Any such requests should be referred to the Executive Director, or designee.

Program staff should also be aware of the potential impact on client confidentiality when a language interpreter is used who is not an employee of the program. In most jurisdictions, use of an employee or private contractor as an interpreter does not constitute a waiver of the attorney-client privilege and the interpreter cannot be compelled to disclose the content of the translated communication. However, communication to interpreters with no employment or contractual relationship with the program may not be protected.

Obviously, disclosure of protected information is often essential as part of representation of a client. Client approval of a particular strategy may implicitly authorize disclosure of information, but particularly sensitive information should be explicitly discussed with the client, and informed consent should be obtained before its disclosure. (See Rule 1.6 of the Mississippi Rules of Professional Conduct).

Topic Heading: Fees

Standard 1.4

A CASEHANDLER EMPLOYED BY THE PROGRAM MAY NOT ACCEPT A CLIENT OR AN APPLICANT FOR SERVICES AS A PRIVATE CLIENT FOR A FEE,

OR OTHERWISE RECEIVE A FEE FROM SUCH AN INDIVIDUAL. EACH CLIENT SHOULD BE FULLY INFORMED AT THE INITIATION OF REPRESENTATION OF THE PROGRAM POLICY REGARDING COSTS OR FEES.

Commentary:

All staff members are prohibited by program policy and by the Legal Services Corporation Act from receiving any compensation or gift of value from clients for services provided to them. Staff members should not accept gifts and other gratuities from clients. It is recognized that at times clients may offer a gift out of gratitude for the work which has been done on their behalf. If it can be done gracefully and without offending the client, staff members should decline such offerings. Clients who offer money should be advised that they may make a donation to the program if they choose. Generally, a casehandler should not either directly or indirectly solicit donations to the program. In compliance with Federal regulations, however, clients who have been represented with funds provided by an Older Americans Act Grant shall be advised at case closing that they may make a voluntary contribution to the program.

MCLS clients may be asked to pay costs such as filing fees. Such fees are to be paid directly to the program, the court or the vendor, however, and never to the casehandler. Each client should be fully advised at the outset of representation of any costs or fees that they will be expected to pay.

Staff members are prohibited by program policy and by ethical considerations from accepting a fee from a private attorney to whom a client has been referred.

Topic Heading: Client participation in the conduct of the representation

Standard 1.5

SUBJECT TO THE LIMITATIONS IMPOSED BY LAW AND ETHICAL OBLIGATIONS, THE CASEHANDLER MUST ABIDE BY THE CLIENT'S DECISION REGARDING THE OBJECTIVES OF THE REPRESENTATION AND MUST CONSULT WITH THE CLIENT REGARDING THE MEANS USED TO ACHIEVE THOSE OBJECTIVES.

Commentary:

Ethical principles mandate that once representation is undertaken, final decisions regarding the objectives of legal representation belong to the client, who is the person directly affected by the case and who will live with the consequences of its resolution. Casehandlers should use their professional skills to identify strategic options for resolving the client's problem and to explain the potential risk and consequences of each, so that clients can participate meaningfully in decisions regarding major case strategy. The casehandler should consult with the client regarding the means to be used to accomplish the client's objective. Technical and legal tactical issues generally are the province of the casehandler. The lines between objectives, means and tactics are often not finely drawn, however, and a casehandler should be sensitive to the need to

keep clients involved and informed about the conduct of their case. (See, Rule 1.2(a), Mississippi Rules of Professional Conduct; See also Standard 7.2).

When representing a group, a casehandler should be clear that the proper role is to advise the group, and not to lead it, even if the group seeks to place the casehandler in a position of control and authority out of deference to the casehandler's skill and expertise. (See Standard 7.16)

Exceptions

There are circumstances where professional responsibility prohibits a casehandler from pursuing an objective or a course of conduct desired by a client. For example, a casehandler may not pursue a frivolous or malicious claim, allow a client to present false evidence, or aid a client in illegal activity. (See Rules 1.2(d), 3.1, 3.3, and 3.4, Mississippi Rules of Professional Conduct). If a client indicates interest in such strategies, the casehandler must explain the ethical prohibitions. If the client persists, the casehandler may have to withdraw from the case. (See Standard 3.11 regarding Termination of Representation).

This Standard does not prohibit the program from denying representation based on program priorities or office protocols, which limit the remedies which will be sought on behalf of a client. Any such limitations must be explained to the client before representation is undertaken. There are times when an attorney may exercise professional judgment on tactical decisions without consulting a client, even though the decision involves a waiver of a client's right. During trial, for example, the duty to expedite proceedings may require such professional decisions. Nevertheless, the casehandler should always be conscious of the client's right to know what is happening and to participate in all but minor or technical decisions about the case.

Topic Heading: Keeping clients informed of the status of their case

Standard 1.6

CASEHANDLERS MUST KEEP EACH CLIENT REASONABLY INFORMED OF THE STATUS OF THEIR CASE.

Commentary:

Clients should receive full and timely information on developments in their cases. Ordinarily, there should be contact with each client every 30 days. When a case is inactive or pending an appeal, less frequent contact may be warranted, though in no case should contact be less often than every 90 days. Clients should also be informed immediately of any major developments, particularly if new or revised strategies are required.

Clients generally should be provided copies of major correspondence and pleadings. Clients should be advised of the filing of all major briefs and memoranda of law, and be offered copies.

The program should make particular efforts to communicate meaningfully with clients whose special circumstances, such as minority, mental or physical disability, make understanding more difficult. (See Rule 1.14, Mississippi Rules of Professional Conduct).

Topic Heading: Responsiveness to client needs

Standard 1.7

CASEHANDLERS SHOULD BE AWARE OF THE LEGAL NEEDS OF CLIENTS IN THE CONTEXT IN WHICH THEY LIVE. TO ACHIEVE THAT AWARENESS, CASEHANDLERS ARE EXPECTED TO INTERACT WITH THE COMMUNITY, INCLUDING MAJOR AND DISTINCT SEGMENTS OF THE POPULATION AND ATTENDANCE AT ACTIVITIES OF THE CLIENT AND LEGAL COMMUNITIES. BASED ON THAT INTERACTION AND OTHER RELEVANT INFORMATION, CASEHANDLERS SHOULD PARTICIPATE IN COMPREHENSIVE PLANNING WITHIN THEIR OFFICES OR UNITS TO MEET THE SUBSTANTIVE NEEDS OF THE CLIENT COMMUNITY.

Commentary:

Each office or unit at MCLS has limited resources to address the competing demands and overwhelming needs of its potential clients. To the extent that its resources are outweighed by demand, the office or unit should seek to use its resources to provide representation which addresses problems which most critically affect its clients. To do so requires some means to identify the legal problems which are most significant to clients.

An important ingredient of maintaining an awareness of clients' legal needs is communication with them. One obvious avenue for such communication is the intake process, where, by definition, pressing legal problems of clients are presented. Other means of assessing client needs will be important as well. Each office or unit should seek to have a clear understanding of the range of legal problems confronting its potential clients to allow it to develop a policy regarding which cases it will accept and to appraise the extent to which it is reaching poor persons with significant, known legal problems.

Interaction with clients regarding the program's legal work involves an ongoing process. Regardless of the effectiveness of formal planning, MCLS may never be fully aware of, or understand, all the needs and objectives of its clients if its contacts with them are exclusively limited to the office setting. Consistent with the limitations discussed above, casehandlers should seek through other means to interact with individual clients, client groups and other organizations which operate for the benefit of clients. There are several goals for this interaction: 1) to keep aware of the changing circumstances and legal needs of clients constantly; 2) to advise clients regarding problems they face that they may not recognize as presenting legal issues; 3) to keep the client population informed regarding the services that MCLS offers.

All such interactions should be undertaken in a manner consistent with the limitations set forth in 45 CFR Part 1612. Specifically, casehandlers should not engage in grass roots lobbying

or organize groups.

Full time legal services casehandlers can interact with clients in several ways, however. Representation of individuals and groups provides the most immediate opportunity. Frequently, representation of groups requires interaction outside the office. To gain the full confidence of a group and to understand its objectives, a casehandler needs to interact with more than just the leaders or spokespersons who formally seek assistance. Obviously, group representation should be undertaken consistent with 45 CFR 1611.5(c).

Staff of the program should also participate in the affairs of the legal community of which MCLS is a part. Casehandlers are encouraged to belong to local bar associations and to engage in appropriate committee work and other organizational activities. Such activities must be consistent with 45 CFR 1612.5(5), which prohibits engaging in grass roots lobbying while participating in bar association activities.

Comprehensive Planning and Priority Setting

Identification of the legal needs that clients consider most important provides the basis for each office or unit to plan comprehensively to meet those needs.

Office or unit planning should result in a sufficiently specific plan to guide the office or unit and the program regarding office or unit structure, case acceptance, resource allocation, training needs and office or unit operation.

Achievement of lasting results on behalf of clients

Program casehandlers should pursue the client's objective zealously within the confines of the law, with the goal of achieving lasting results that respond to client-identified needs and objectives.

Topic Heading: Institutional stature and credibility

Standard 1.8

CASEHANDLERS SHOULD RECOGNIZE THAT THEIR PROFESSIONALISM ENHANCES THE INSTITUTIONAL STATURE AND CREDIBILITY OF THE PROGRAM WHICH IN TURN STRENGTHENS ITS CAPACITY TO ACHIEVE CLIENT OBJECTIVES.

Commentary:

Effective representation of clients is enhanced to the extent that MCLS succeeds in establishing a positive institutional presence in the communities in which it operates. The program's reputation persists despite changes in staff and participating private attorneys and provides the backdrop against which all its casehandlers practice. Casehandlers should consciously seek to develop respect among clients, and with those who make decisions which

affect both clients and the program. Casehandlers should see MCLS as part of a comprehensive advocacy system which serves the interests of clients.

The institutional stature of the program contributes to its success in several ways. First, it can assist positively in case strategies and can increase success in achieving results for clients. Second, it enhances the ability of clients to influence decisions, as key decision makers seek input from the program and its clients before adopting policies affecting clients.

Third, it promotes increased morale as staff find increased satisfaction as part of an institution which commands the respect of clients and the community at large.

The program's institutional status with decision makers is achieved through consistent high quality work which promotes respect for legal services casehandlers and their clients. Attorneys, judges and others who have both the opportunity and ability to evaluate legal work undertaken by the program should know that the program handles all cases thoroughly and expertly. All representation should be conducted skillfully with the demonstrable purpose of remedying significant problems for clients. Casehandlers should be known for their willingness to pursue forcefully and competently any legitimate remedy to which their client may be entitled. At the same time, program staff should be mature and exercise sound judgment and should never squander resources on meaningless posturing or frivolous claims.

Relations with all decision makers should be honest and forthright. Casehandlers should avoid unnecessary confrontation that is not related to the accomplishment of a goal for a client.

INTERNAL CONTROLS AND QUALITY ASSURANCES

Topic Heading: Timely treatment of cases

Standard 2.1

CASEHANDLERS MUST MEET ALL DEADLINES IMPOSED BY LAW OR APPLICABLE PROCEDURES AND DISPOSE OF ALL CASES WITH REASONABLE PROMPTNESS CONSIDERING THE CLIENT'S NEEDS, THE COMPLEXITY OF THE CASE, AND THE WORKLOAD OF THE CASEHANDLER. TO THIS END EACH CASEHANDLER MUST CALENDAR ALL MAJOR EVENTS AND LOG AND MEET MAJOR WORK DEADLINES IN THE REPRESENTATION OF CLIENTS.

Commentary:

MCLS has a professional responsibility to meet all deadlines in a case and to assure the timely disposition of all pending case matters. To assure that its casehandlers meet all deadlines and scheduled appearances, MCLS maintains a calendaring and a tickler system. The calendaring system is designed to notify both the casehandler and pertinent office staff of all important dates. All dates and deadlines should be immediately recorded with information sufficient to identify

the case and the nature of the deadline or proceeding in question. The system is designed to identify any conflicts in scheduling so that the casehandlers and the program may take the necessary steps to meet all of their obligations.

The tickler system is designed to record and remind casehandlers of major events and major work that need to be completed sufficiently in advance of the work's due date so that it can be completed in a timely and professional manner. Timely completion of cases requires that program casehandlers tickle necessary actions for completion. Most program casehandlers handle a number of individual cases and even the most diligent may overlook an important action which must be taken in a particular case. The tickler system should regularly remind the casehandler of key planned episodes in a case so that the adopted strategy is implemented according to the proposed timetable. Regular reminders should be tickled in cases where no action is planned for a long period of time so that the casehandler may review the original strategy and maintain contact with the client.

At a minimum each casehandler will record the following information in the calendar or tickler system, as appropriate:

- Court dates and appearances.
- All deadlines.
- All specific tasks necessary to accomplish the strategy which has been adopted in the case, tickled sufficiently far in advance so that the necessary work can be completed in a timely fashion.
- Client conferences.
- Planned discovery or investigation to be initiated by the casehandler, or regarding which a response or other action is required.
- All necessary or required notices.
- A regular review of the status of the case regardless of other actions that are planned. (See Standard 1.6).

Topic Heading: Standard case files

Standard 2.2

A FILE WILL BE ESTABLISHED FOR EACH CLIENT THAT:

- **RECORDS ALL MATERIAL FACTS AND TRANSACTIONS,**
- **PROVIDES A DETAILED CHRONOLOGICAL RECORD OF WORK DONE ON EACH MATTER,**
- **SETS FORTH, TO THE EXTENT NECESSARY AND APPROPRIATE, A PLANNED AND REGULARLY UPDATED STRATEGY THAT DELINEATES KEY STEPS TO BE TAKEN WITH A FIRM TIMETABLE FOR THEIR COMPLETION, AND**
- **MINIMIZES DISRUPTION IN THE EVENT THE REPRESENTATION IS TRANSFERRED TO ANOTHER CASEHANDLER.**

Commentary:

- Client files should be organized so that critical elements of a case follow in a logical and coherent fashion. Each should contain the following essential information:
- a complete chronological record of client interviews, adversary contacts, witness interviews, field investigations, and records searches, including dates, names of persons contacted, important facts ascertained, and important statements, concessions and allegations made;
- an indication of the options available to and selected by the client, and a statement of the client's objective; copies of all correspondence, pleadings, legal memoranda, legal research and other documents representing work done on a legal matter, organized systematically for ready reference;
- consistent with the complexity of the matter, a specific case plan with a clear delineation of tasks and a timetable with deadlines for completion of each task;
- memoranda reflecting the periodic evaluation of the case and updating of the planned strategy to reflect changes and developments in the matter or in the law affecting it; and
- a record of time spent on the matter adequate to support any request for attorneys fees, if appropriate, and to meet the program's management needs. (See Appendix for checklist of specific items which should be contained in each case file).

Transfer of Cases

The primary responsibility of MCLS and its casehandlers is to the client. Decisions regarding the transfer of cases are, therefore, governed by the best interests of the client. Generally, continuity in representation is the most beneficial course for a client and, therefore, transfer of cases is discouraged. Nevertheless, there may be situations when transfer of cases between casehandlers is unavoidable or is in the best interest of the client. At times cases may be transferred temporarily because of the absence of the casehandler for health reasons or while on leave.

Prior to transfer of a case, in such circumstances, each casehandler shall insure that all pertinent information desirable for the effective handling of the case is transferred to the new casehandler. The casehandler from whom the case is being transferred will prepare a succinct transfer memorandum analyzing the current status of the case and directing attention to the next steps to be taken and target dates to be met. The memo shall be submitted to the supervisor or management designee, as appropriate, prior to the transfer, with a copy to the file. The affected clients must be notified immediately of transfer of the case and be told the name of the new casehandler with whom to communicate about the case. The client should be given an opportunity to meet with the new casehandler as soon as possible.

APPENDIX - Checklist of items to be contained in each case file:

Casehandler shall maintain each file in a complete and organized fashion to enhance the easy retrieval of information, supervision of the work, and transfer of the case. To this end each case file shall contain:

1. The client's intake form;
2. Notes from the intake interview and the initial interview by the casehandler;
3. The case opening memorandum, with a level of detail appropriate to the complexity of the case;
4. A retainer agreement signed by the client;
5. A citizenship form signed by the client;
6. A case planning memo, with a level of detail appropriate to the complexity of the case;
7. Copies of all correspondence including:
 - (a) A rejection letter, when appropriate
 - (b) Confirming letters regarding settlements, when required;
 - (c) Letters explaining a choice not to pursue an appeal, when required;
8. A case activity log describing each action taken on the case including:
 - (a) An entry that the client received a copy or explanation of the grievance procedure, when required;
 - (b) An entry indicating any pamphlets that the client was given;
 - (c) Notes regarding all case investigations;
 - (d) Research activities
 - (e) Counsel and advice, including an explanation of options;
 - (f) Settlement offers and counter-offers;
 - (g) Activities related to pleadings, motions and discovery;
 - (h) Activities related to preparation for hearings and trials;

- (i) Notes regarding meetings with supervisors or management designees, as appropriate to obtain necessary approvals or reviews;
 - (j) Informal advocacy or community education activities;
- 9. Copies of all pleadings, motions, formal discovery, briefs, and other documents filed in the case;
- 10. Copies of all documents obtained from the client, by informal means, or by discovery;
- 11. Post-trial or hearing memos when required;
- 12. Copies of necessary approvals for the acceptance of appeals or enforcement of judgments;
- 13. Transfer memos, when required; and
- 14. Time records, when required.

Topic Heading: Zealous representation of clients and meeting the costs of representation

Standard 2.3

CASEHANDLERS MUST ZEALOUSLY REPRESENT THEIR CLIENTS' INTERESTS, AND, THEREFORE SHOULD AVOID REJECTION OF A STRATEGY MERELY BECAUSE IT IS COSTLY. A CASEHANDLER NEEDS TO IDENTIFY THE POSSIBILITY OF SUCH COSTS IN THE COURSE OF PLANNING THE CASE AND SHOULD SEEK THE APPROVAL OF SUCH EXPENDITURES AS SOON AS THE POTENTIAL COST IS IDENTIFIED.

Commentary:

Casehandlers should use all necessary means and strategies for effective representation of client interests, including discovery and the use of expert witnesses, which may require the substantial expenditure of program funds. To the extent that the budget allows, therefore, MCLS seeks to assure that funds are available for these purposes. The program strives to budget sufficient money to permit the routine use of some form of discovery in all cases when it is appropriate and to permit the program in appropriate instances to undertake costly major cases. The policy of the program is to assure casehandlers that once a legal matter is accepted, adequate funds will be available to pursue the case fully, while at the same time assuring that extraordinary, unanticipated expenditures for representation will not undermine its fiscal integrity.

Accordingly, the program expects casehandlers to meet the following policy and criteria for spending funds for representation costs. Each casehandler is responsible for identifying any extraordinary costs which may be associated with a strategy which may be pursued in the representation of a client. In considering a strategy the casehandler should consider the least costly, most effective alternative to accomplish the desired objective. The necessary costs should be identified as early as possible in the representation. As soon as such costs are identified, the casehandler must seek approval from the appropriate supervisor or management designee of the required expenditure. It is unacceptable for a casehandler to proceed with a legal strategy and then to find that the program cannot sustain the necessary costs associated with that strategy.

The criteria for determining if the expenditure is appropriate are:

- the likelihood of success in the matter,
- the need to incur costs in order to pursue the matter successfully,
- the relationship between the cost and the potential benefit to the client,
- the availability of less costly alternatives,
- the potential for recovering the costs.

The criteria will be applied consistently in committing funds to major cases and in developing case strategy in routine legal matters. In routine cases, casehandlers in consultation with program management will have the discretion to incur necessary costs in accordance with the established criteria. In major cases requiring extraordinary expenditures, supervisory or management approval is required before the case is accepted to assure that sufficient funds are available to pursue the matter.

Complete records of all costs should be maintained and casehandlers should routinely seek and enforce orders awarding them costs.

Topic Heading: Case Acceptance procedures

Standard 2.4

CASES WILL BE ACCEPTED ONLY IN ACCORDANCE WITH THE CASE ACCEPTANCE POLICIES AND PROCEDURES OF THE PROGRAM. A CASEHANDLER WILL MAINTAIN A CASELOAD THAT REFLECTS AN APPROPRIATE LEVEL OF PRODUCTIVITY, AS INDICATED IN UNIT OR OFFICE CASELOAD RECOMMENDATIONS. LEGAL WORK WILL BE ASSIGNED AND INDIVIDUAL CASELOADS ESTABLISHED ACCORDING TO THE FOLLOWING CRITERIA:

1. **THE CASEHANDLER'S SPECIFIC LEVEL OF EXPERIENCE, TRAINING, AND EXPERTISE;**
2. **THE STATUS AND COMPLEXITY OF THE CASEHANDLER'S EXISTING CASELOAD;**
3. **THE CASEHANDLER'S OTHER WORK RESPONSIBILITIES;**
4. **THE AVAILABILITY OF ADEQUATE SUPPORT FOR AND SUPERVISION OF THE PERFORMANCE OF THE CASEHANDLER;**
5. **UNIQUE, LOGISTICAL PROBLEMS FACING AN OFFICE, A UNIT OR ITS CLIENTS WHICH DIRECTLY AFFECT THE CASEHANDLER;**
6. **NEEDED OPPORTUNITIES FOR THE CASEHANDLER TO DEVELOP PROFESSIONALLY;**
7. **THE PROGRAM'S PRIORITIES AND PROTOCOLS; AND**
8. **OTHER RELEVANT FACTORS THAT DIRECTLY AFFECT THE PERFORMANCE OF LEGAL WORK.**

Commentary:

As with all legal services programs, MCLS confronts legal needs and demands that far outstrip the resources available to respond. In order to allocate its resources rationally, the program has established a policy and procedure for determining which cases it will accept. This case acceptance policy is designed to meet two objectives:

- to allocate scarce resources to the legal problems identified as priorities in the program's planning process, and
- to control specific demands on available time so that each client is provided high quality representation.

Program case acceptance policies are not to be used, however, as an excuse for limiting the productivity of its casehandlers or the efficiency of its operation. A casehandler is expected to carry a caseload that reflects a commitment to high productivity on behalf of clients, as indicated in the Collective Bargaining Agreement.

The case acceptance policy involves consideration of the following factors:

- the relationship of the issues presented to established priorities and funding source limitations;

- the potential benefit to the client if the case is undertaken and the potential consequence if it is rejected;
- the likelihood of success, based on the facts at hand;
- the existence of sufficient program resources to assure quality representation if the matter is accepted; and
- the availability of other resources to help the client resolve the problem.

To assure the quality of legal work, MCLS seeks to assign cases to those individuals who are best able to handle the particular legal matter presented by the client. This involves consideration of available time and of substantive expertise.

Professional ethics recognize the need to ensure adequate time for preparation of a case and for acquiring sufficient knowledge and skill to handle every accepted case with professional competence. (See, Rules 1.1 and 1.3, Mississippi Rules of Professional Conduct). Concerns about overloading casehandlers, however, should never be used to excuse inefficiency either by the program or by individuals within it. Accordingly, program management will work to enhance productivity, and all employees are expected to strive for the efficient use of time and resources.

Assignment of cases to staff casehandlers and private practitioners and individual caseloads of staff casehandlers should reflect the level of their training and experience. Each matter undertaken by less experienced casehandlers provides an opportunity for the casehandler to expand professional skills. Therefore, adequate time should be factored into the work load for development of good work habits. As a casehandler's skill levels and knowledge increase, he/she should efficiently handle an increasing number of legal matters of greater complexity. The degree of specialization in the casehandler's work will also affect optimum work load limits.

Case assignments and work load limitations for staff casehandlers will take into consideration variables that affect the time required to handle each case competently. Bi-monthly written reports will be prepared by each casehandler which list:

- the number of the casehandler's open cases;
- the number of active cases;
- the number of cases opened and closed during the period; and
- the number of hours spent by the casehandler during the period on special projects and other non-routine matters.
- In addition, periodically it may be useful for a casehandler to prepare a more detailed report which:
- outlines numbers and types of legal matters being handled;

- identifies cases in litigation, those requiring extensive discovery, those set for bench or jury trial, and those on appeal;
- identifies cases involving non-litigation strategies and the planned actions which will affect the casehandler's ability to take more cases;
- identifies more complex matters; and
- identifies other factors that will affect the casehandler's ability to accept additional cases.

Preparation of such reports should give each casehandler an awareness of future time commitments and the capacity to accept new assignments. In addition, they enable supervisors and management designees to identify patterns that require adjustments in case assignments and to evaluate the progress on open cases.

The work load of staff will also be adjusted to assure adequate time for essential activities such as training and administrative and supervisory duties which require substantial time commitments.

Topic Heading: Competence of casehandlers

Standard 2.5

CLIENTS OF MCLS ARE ENTITLED TO REPRESENTATION BY PERSONS WHO ARE COMPETENT, SENSITIVE TO CLIENTS, AND COMMITTED TO PROVIDING HIGH QUALITY LEGAL SERVICES.

Commentary:

Legal services for the clients of MCLS should be provided by persons who are professionally competent, sensitive to their clients, and committed to high quality legal work. To this end, the program actively recruits employees who possess such characteristics. It is the responsibility of each casehandler to maintain the professional skills and knowledge necessary to provide the quality representation to which clients are entitled. Casehandlers should strive to empathize with their clients and to bridge differences which may exist in education and degree of sophistication regarding the legal system.

All MCLS employees are expected to act as professionals and to conduct their work seriously and thoughtfully. It is important that staff members foster an attitude of cooperation with each other. Accordingly, all staff are expected to treat each other with dignity, courtesy and respect. There is no place for elitism at MCLS. Casehandlers are expected and encouraged to share information regarding practice and procedure with each other and with other staff members and to assist other staff members as the need arises. Staff should recognize that all employees

work under a great deal of pressure resulting from the demands of clients and case matters. Supportive, working relationships leavened with a sense of humor are important to help all staff work effectively.

Topic Heading: Work of paralegals, law students and other legal assistants

Standard 2.6

PARALEGALS, LAW STUDENTS AND OTHER LEGAL ASSISTANTS MUST COMPLY WITH ETHICAL REQUIREMENTS PERTAINING TO THEIR WORK.

Commentary:

Paralegals, law students and other legal assistants supervised by an attorney have historically been an essential part of practice at MCLS.

Ethical and statutory provisions, however, require that the work of staff and volunteer paralegals be supervised by a licensed attorney and that they receive adequate training to be proficient in the work to which they are assigned. (See Rule 5.3, Mississippi Rules of Professional Conduct). Casehandlers who are not licensed to practice law must not implicitly or explicitly hold themselves out to be lawyers.

Topic Heading: Supervision

Standard 2.7

CASEHANDLERS ARE EXPECTED TO ACCEPT SUPERVISION AND TO COOPERATE IN THE SUPERVISORY SYSTEMS THAT ARE ESTABLISHED BY THE PROGRAM, IN ORDER TO MAXIMIZE THEIR GROWTH AND DEVELOPMENT AS ADVOCATES AND TO ASSURE THAT EACH CLIENT IS COMPETENTLY REPRESENTED.

Commentary:

The responsibility and authority for supervision of representation are grounded in the ethical and legal responsibility that MCLS assumes for each accepted case. This responsibility arises from the relationship that is created as a contract between the program and the client, as articulated in a pertinent ethics opinion of the American Bar Association:

"It must be recognized that an indigent person who seeks assistance from a legal services office has a lawyer-client relationship with its staff of lawyers which is the same as any other client who retains a law firm to represent him (or her). It is the firm, not the individual lawyer, who is retained. ...Staff lawyers of a legal services office are subject to the direction of and control of senior lawyers,

the managing attorney, chief lawyer, or the executive director (if a lawyer), as the case may be, just as associates of any law firm are subject to the direction and control of their seniors. Such internal communication and control is not only permissible but salutary. It is only control of the staff lawyer's judgment by an external source that is improper."

ABA Formal Opinion 334 p.7 (1974).

The fact that primary responsibility for cases rests with MCLS does not absolve the individual casehandler from the duty to represent each client competently. Rather, it creates the obligation for the program to assure reasonable supervision and for the casehandler to accept the supervision offered and to seek it out when working on complex or unfamiliar matters.

Active participation in the program's supervisory system may take place in a variety of ways. Supervision at MCLS may take the following forms:

- Performance evaluation pursuant to program policy;
- Review of case logs regarding the status of all open cases, with sufficient detail to allow effective review;
- Review of opening and closing memos;
- Regular participation in unit or office meetings to review the status of open cases;
- Review by supervisors and peers of written work prior to its dissemination;
- Day-to-day interaction with peers and supervisors regarding pending matters; and
- Co-counseling and other forms of sharing of responsibility for the conduct of a case or other assigned duty.

Topic Heading: Training

Standard 2.8

CONSISTENT WITH PROGRAM POLICY AND AVAILABLE RESOURCES, CASEHANDLERS SHOULD AVAIL THEMSELVES OF ALL TRAINING OPPORTUNITIES THAT ARE APPROPRIATE TO THEIR FUNCTIONS AND RESPONSIBILITIES.

Commentary:

Consistent with its obligations responsibility to assist in the professional growth of its staff, MCLS will allocate sufficient resources for training to assure that inexperienced individuals

become proficient and that more experienced persons increase their competence. Staff have a corresponding responsibility to cooperate in the development of a training work plan for their unit or office and for themselves. They are expected to take advantage of opportunities that are offered to participate in training that will improve their ability to assist clients and to carry out their job responsibilities. MCLS will attempt to offer periodic in-house training events on both procedural and substantive matters, as resources permit.

Topic Heading: Brief banks

Standard 2.9

CASEHANDLERS SHALL SUPPORT EFFORTS TO ASSURE THE AVAILABILITY OF ADEQUATE RESOURCES FOR APPROPRIATE LEGAL RESEARCH BY ACTIVELY PARTICIPATING IN EFFORTS TO ESTABLISH AND MAINTAIN BRIEF BANKS AND OTHER PROGRAM METHODS FOR SUPPORTING QUALITY WORK.

Commentary:

To provide high quality client representation, casehandlers should have access to adequate means for effective legal research. In addition to pertinent federal and state statutes, state and federal reporters, relevant treatises, and source material on poverty law issues, MCLS may create a brief bank and other methods for sharing the research products of its casehandlers, so that the cumulative knowledge gained through successful representation of clients with similar issues is available to all program casehandlers. Brief banks and other methods of maintaining research will only be useful if they are supported by all staff and if appropriate documents are submitted on a regular basis. Such support will maximize the efficiency of the staff's research efforts and will avoid duplication of effort.

MCLS also expects its casehandlers to seek support and assistance from appropriate national, regional and state support centers.

- to obtain available training materials such as manuals, background memos, sample pleadings, advocacy and substantive law materials from the web,
- to stay informed on new developments and analyze the degree to which new strategies may be possible for serving low income communities,
- to support limited representation of clients,

Practice Standards

Topic Heading: Initial exploration of the client's problem

Standard 3.1

EACH INSTANCE OF REPRESENTATION SHALL BEGIN WITH AN INITIAL EXPLORATION OF THE CLIENT'S PROBLEM WHICH:

- **BEGINS DEVELOPMENT OF AN ATMOSPHERE OF TRUST AND CONFIDENCE BETWEEN THE CASEHANDLER AND THE CLIENT;**
- **ELICITS KNOWN FACTS AND CIRCUMSTANCES PERTINENT TO THE CLIENT'S PROBLEM;**
- **TENTATIVELY IDENTIFIES THE LEGAL ISSUES PRESENTED;**
- **ESTABLISHES INITIAL CLIENT OBJECTIVES; AND**
- **INFORMS THE CLIENT ABOUT THE NATURE OF THE LEGAL PROBLEM AND THE NEXT STEPS TO BE TAKEN BY BOTH THE CLIENT AND THE CASEHANDLER.**

Commentary:

This Standard applies both to the initial interview by the intake unit or Call Center as well as to the initial interview between a casehandler and a client who has been provisionally accepted for representation. Generally, initial interviews will take place over the telephone. Additional standards regarding telephone intake will be developed and refined as the Call Center comes fully online.

At the outset of representation, the interviewer and the potential client should jointly establish known facts and explore the nature of the legal problem presented. Some of this initial fact-gathering will take place in the process of determining whether to accept the case. Casehandlers should be familiar with the information which has been gathered before, to avoid unnecessary repetition of the facts by the client.

The initial interview should obtain the facts that give rise to the legal problem or problems that the client hopes to resolve. Interviews should be conducted in a way that promotes the full elucidation of facts by the client. The interviewer should be conscious of the fact that the client may not recognize legal problems which relate to or underlie the specific situation which has caused the individual to seek legal help. (See the attached Appendix regarding Effective Interviewing Skills).

At times a person will contact the program on behalf of client with a disability or for some other reason. It is imperative in such circumstances to determine that the interests of the person who contacts the program are not adverse to those of the client, and whether the client's best interests are being pursued. (See Standard 1.2)

The initial exploration of the matter should help the client determine the objectives and should clarify the nature of the legal problem and the next steps to be taken. At the intake interview, the client should receive a clear explanation of the next steps to be undertaken by the program to determine if the individual will be represented. At the initial interview the casehandler should explain in lay terms the legal matters presented, and tentatively identify the steps the casehandler may take regarding the matter and, most important, the steps the client should take or avoid.

APPENDIX: Checklist of items for the initial interview:

1. Assure the client's comfort.
2. Identify yourself and explain who you are.
3. Explain how the office works.
4. Explain the purpose of the interview.
5. Elicit the client's problem or problems.
6. Organize the facts that the client presents.
7. Provide counsel and advice regarding the client's rights as appropriate.
8. Explain what MCLS can do. If a decision regarding whether to accept the case for representation has not been made, explain that to the client. Explain any limitations on the representation that has been undertaken.
9. Explore other resources.
10. Describe what the next immediate step is.
11. Allow the client to ask questions.
12. If necessary, have the client sign the retainer agreement and all other applicable documents.
13. Close the interview with proper amenities, including escorting the client out of the office, if the interview is in person.

APPENDIX: Effective Interviewing Skills

Effective interviewing requires particular skills to extract the necessary information in a manner that keeps the flow of information open and assures that the client, not the casehandler, defines the problem. At the same time the interviewer should keep the discussion focused on relevant matters.

The client may not organize the facts in the same manner the casehandler would for effective presentation of a case. Moreover, the client may not perceive the relevance of some facts and may overestimate the importance of others. The interviewer should be a skilled listener who can draw out facts and discern their importance. A good interviewer will let clients tell their story in their own words without losing sight of the legal problem in matters that are truly irrelevant.

The casehandler should guard against controlling interviews too strictly. Holding clients to a rigid set of questions may serve the casehandler's need to categorize information chronologically or to state essential elements of a case, but in practice may simply shut off information from the client. The client may feel inhibited by an unfamiliar situation and may be reluctant to volunteer anything unless asked, with the result that significant facts are never revealed. The interviewer should encourage and allow the client to talk, but should intervene constructively to flesh out important issues and to pursue matters of particular relevance.

Interviews should not be narrowly circumscribed by the interviewer's initial definition of the legal problem being presented. If the problem is categorized too soon, the casehandler may not explore all of the issues which may be present.

The interviewer should be attentive to the risk that some clients may dwell on matters which turn out to be irrelevant. It is the interviewer's responsibility to keep the interview focused on truly pertinent matters. On the other hand, the interview should be flexible enough to allow the clients to present major concerns. An overstatement may be a symptom of a particular anxiety or misunderstanding about the case. The casehandler's awareness of and response to that anxiety may be important to effective client involvement in resolving the matter. Moreover, such facts may indicate other legal problems which should be explored, or referred to the intake unit, as appropriate.

Topic Heading: Case planning

Standard 3.2

CONSISTENT WITH PROGRAM POLICY, EACH CASEHANDLER SHALL COMPLETE AN OPENING MEMORANDUM FOR EACH CASE FOR WHICH THE CASEHANDLER IS RESPONSIBLE. THE NATURE AND EXTENT OF THE MEMORANDUM SHALL DEPEND UPON THE COMPLEXITY OF THE FACTS AND ISSUES IN THE CASE. AT A MINIMUM, IN ALL CONTESTED AND NON-ROUTINE MATTERS, THE MEMORANDUM SHALL INCLUDE A STATEMENT OF

RELEVANT FACTS, A STATEMENT OF THE ISSUES, A CASE PLAN, AN EVALUATION OF THE STATUTE OF LIMITATIONS RELEVANT TO THE CASE AND A TIMETABLE FOR COMPLETION OF THE PRELIMINARY TASKS. THE CASE PLAN SHOULD:

- RELATE MATERIAL FACTS TO LEGAL ISSUES RAISED BY THE CLIENT'S PROBLEM,
- IDENTIFY APPLICABLE LAW AND AVAILABLE REMEDIES;
- ENABLE THE CLIENT AND CASEHANDLER TO MAKE KNOWLEDGEABLE DECISIONS ABOUT THE MEANS TO PURSUE THE CLIENT'S OBJECTIVE AT EACH STAGE OF THE REPRESENTATION, WITH FULL CONSIDERATION OF AVAILABLE RESOURCES AND OF THE RISKS AND BENEFITS OF EACH OPTION; AND
- BE REVISED AND UPDATED REGULARLY, BASED ON THE RESULTS OF THE LEGAL RESEARCH AND ANALYSIS, FACTUAL INVESTIGATION, DISCOVERY AND OTHER FACTORS THAT AFFECT THE CONDUCT OF THE CASE.

Commentary:

Case planning as reflected in the opening memo creates a tentative road map for handling a case to achieve the client's objective. The case plan must be regularly reviewed and adjusted in response to significant developments in the case.

Case planning provides an opportunity to assess the relationship between the problem presented by the individual client and problems which affect other clients. If the client's problem is part of a recurring pattern or one aspect of a broader problem affecting other provider or casehandler clients, that fact may be important in charting a case strategy. The pattern may have important evidentiary value in the individual case. It may also suggest that the program should seek a remedy on behalf of a group of clients, as well as for the individual client.

Case planning should evaluate a number of factors that can affect the outcome of a case, including the following:

- the state of the law regarding the issues involved, the particular facts in the case, and the relationship between the two;
- the client's personal circumstances including, for example, the strength and commitment to pursue a lengthy and uncertain strategy; and
- in appropriate circumstances, the existence of other parties with a stake in the outcome of the matter.

The extent of such an analysis will vary with the complexity of the case. The more complex the case and the greater its significance, the more critical becomes an expansive, strategic analysis which includes a wide variety of factors which may influence its outcome. In complex matters, the involvement of several people in the case planning process is recommended.

When a strategy is adopted, key steps for implementation should be determined with a firm timetable for their completion. A firm timetable is important so that, to the extent practicable, the casehandler and not the adversary controls the pace and direction of the case. Generally, the casehandler should assume a defensive, reactive posture in a case, only if it is deliberately decided that it is strategically wise to do so.

Case planning should determine the approximate resources necessary to pursue the case. If extraordinary resources will be required, the casehandler must discuss with the Director of Litigation, a supervisor or a management designee whether they will be available.

Topic Heading: Investigation

Standard 3.3

EACH CLIENT PROBLEM SHOULD BE INVESTIGATED TO ESTABLISH ACCURATE AND THOROUGH KNOWLEDGE OF ALL RELEVANT FACTS, FAVORABLE OR UNFAVORABLE TO THE CLIENT'S POSITION.

Commentary:

Effective representation of a client requires that the casehandler have all relevant facts which advance or impede the client's objectives. A casehandler should begin gathering information promptly upon undertaking a matter, unless there is a sound strategic reason for postponing it. Decisions not to investigate relevant matters and the specific reason therefore, should be noted in the client file.

In formulating a plan for investigation, the casehandler should be as attentive to the need to uncover unfavorable facts as to determine favorable ones. Thorough knowledge of both is critical to the formulation of an effective strategy.

The casehandler should understand the legal issues involved in the matter in order to determine whether information is relevant and material. Facts should be organized in relation to the legal issues to enable the casehandler to evaluate their impact on the client's objectives and to identify the need for further investigation or for information necessary to counter adverse facts.

Casehandlers should thoroughly investigate potentially relevant sources of information and should record the results of the investigation in written memoranda for the case file, while the facts are fresh. As appropriate, this should include the following:

- interviewing witnesses and informally contacting opposing counsel, or an unrepresented adversary consistent with relevant ethical norms, such as Rule 4.3 of the Mississippi Rules of Professional Conduct, to obtain the facts asserted by an opponent and to gain useful insight into the opponent's case strategy;

- obtaining documents in the client's possession and those available through discovery, or obtainable as public records or under the Freedom of Information Act; and
- reviewing public records, as appropriate;
- personal observation of the scene at which key events took place;
- taking photographs, as appropriate;
- developing subject matter expertise, where relevant and necessary;
- if the matter is in litigation, formal discovery to obtain needed information which will not be disclosed voluntarily and to pin the opponent down to a particular version of the facts; (See Standard 3.8-4 on Discovery).

Topic Heading: Legal research and analysis

Standard 3.4

THE CASEHANDLER SHOULD ANALYZE EACH MATTER AND RESEARCH PERTINENT ISSUES TO DETERMINE THE RELATIONSHIP BETWEEN THE CLIENT'S PROBLEM AND EXISTING LAW, AND WHETHER THERE IS A GOOD FAITH BASIS TO SEEK EXTENSION, MODIFICATION, OR REVERSAL OF EXISTING LAW WHICH IS UNFAVORABLE TO THE CLIENT. THE RESULTS OF THE LEGAL RESEARCH AND ANALYSIS SHOULD BE RECORDED IN THE CLIENT FILE.

Commentary:

Legal research and analysis are essential steps in effective representation of clients that are closely linked to planning and information gathering. The facts that define the client's problem determine the scope and direction of the initial research. That preliminary research, in turn, forms the basis of tentative legal theories that shape potential case strategy. Research and analysis should continue as part of the ongoing reevaluation of a range of strategies and theories toward the concentration of representation efforts on those issues which are most relevant and critical to resolving the client's problem.

Legal research and analysis should be reduced to writing and kept in the case file. In more complex cases, a formal memorandum is appropriate. Reducing research to writing is necessary to prevent the research from having to be repeated in the event that the file is transferred or the case continues over a lengthy period.

A thoughtful legal analysis should be undertaken regardless of the apparent initial simplicity of the issue the client presents. Even in routine cases, important legal issues may be overlooked and creative responses stifled without adequate legal research and analysis.

Research should first explore whether existing law can be directly applied to further the client's interests. The research should determine if there is a basis for distinguishing law which disfavors the client's position.

The following items generally should be considered in the conduct of legal research and analysis:

- Statutes,
- Regulations,
- Legislative history,
- Court rules,
- Scholarly comment, and
- Similar cases handled by MCLS and the appropriate brief bank.

The casehandler should be familiar with statutes, regulations, and case law which may have a bearing on the legal matter at hand. Research should not rely on secondary sources such as treatises, but should directly review primary sources to allow the casehandler to consider their relevance to the client's problem and to obtain full comprehension of the legal issues involved. The casehandler should also make certain that each source is current by reviewing later interpretations of relevant citations.

Legal Research and Analysis Should, Where Appropriate, Develop Theories Which Seek the Extension, Modification or Reversal of Existing Law to Further the Client's Interests

Effective representation of a client may require that a casehandler expand the scope of research to determine whether there is a basis for modifying, extending, limiting, or reversing a rule of law which is unfavorable to the client. (See Rule 3.1, Mississippi Rules of Professional Conduct).

When research determines that a client's interest cannot be reasonably pursued without a major effort to modify existing law, the casehandler should discuss the following strategic factors with the Director of Advocacy, a supervisor or a management designee to determine whether to make that effort:

- the likelihood of success. The casehandler must have a persuasive argument to convince the relevant judge, hearing officer, legislature, or other decision maker. At a minimum, the casehandler must have a good faith argument and must avoid defending or asserting a frivolous position. (See Rule 3.1 of the Mississippi Rules of Professional Conduct).
- the resources necessary to pursue the matter. Efforts to modify or extend current law often involve extensive time, substantial discovery costs, expert witness fees, expensive appeals, and other costs.
- the importance of the issue to the client and its relation to established program priorities.

- whether other resources exist that might resolve the problem.

Topic Heading: Counsel and advice

Standard 3.5

THE CASEHANDLER SHALL EFFECTIVELY COUNSEL, AND ADVISE THE CLIENT AT ALL STAGES OF THE REPRESENTATION. THIS REQUIRES THAT THE CASEHANDLER:

1. ASSIST THE CLIENT TO IDENTIFY AND DEFINE THE LEGAL PROBLEM AND TO REACH A COMMON UNDERSTANDING OF THE CLIENT'S OBJECTIVE IN SEEKING LEGAL ASSISTANCE;
2. IDENTIFY AND EVALUATE THE MEANS AVAILABLE TO ACHIEVE THE CLIENT'S OBJECTIVE;
3. EXPLAIN TO THE CLIENT AS CLEARLY AS POSSIBLE THE ADVANTAGES, DISADVANTAGES AND POTENTIAL RISKS OF EACH SIGNIFICANT OPTION SO THAT THE CLIENT MAY EFFECTIVELY PARTICIPATE IN DETERMINING THE MEANS BY WHICH THE CLIENT'S OBJECTIVE IS PURSUED.

Commentary:

One of a casehandler's key functions is to assist clients to understand their problems fully and to help them decide how to respond. The client, not the casehandler, must ultimately determine the objective to be sought, within the limits imposed by law, the casehandler's ethical obligations and program resources. The casehandler's role is to utilize legal knowledge and problem solving skills to help the client to understand the full nature of the problem and to determine the result that it is possible to achieve. A casehandler should translate legal concepts into clear terms the client can understand.

The counseling role is an essential ingredient of the client-casehandler relationship that should be effectively performed at all stages of representation. It is a role that must be carried out whether the client is simply seeking advice and brief service or seeks more long term and complex representation.

In exploring the relative advantages and disadvantages of available options, it is appropriate to explain the potential risks and benefits for the overall client community. (See Rule 2.1, Mississippi Rules of Professional Conduct). A casehandler should be aware, however, of the risk of manipulating a client into uninformed acceptance of the casehandler's own preferred objectives and strategies. The decision regarding the objective of the representation belongs solely to the client.

This advice and counseling role calls for the following specific skills:

- the ability to listen and interview;
- the ability to identify and analyze the key elements of a problem and its potential solution;
- the ability to understand the legal ramifications of the client's situation and to know or to determine through research what may be done legally in response;
- the ability to evaluate the range of factors that contribute to the problem and favor or impede its resolution;
- the ability to communicate professional judgments regarding the matter to the client.

Topic Heading: Informal representation

Standard 3.6

THE CASEHANDLER SHOULD PURSUE NON-ADVERSARIAL, INFORMAL REPRESENTATION WHEN IT MAY ACCOMPLISH THE CLIENT'S OBJECTIVE.

Commentary:

Not all legal representation is formal and adversarial. Lawyers and paralegals traditionally intercede informally on their clients' behalf. Many clients seek legal assistance because they believe that legal practitioners can assist them because of the practitioners' knowledge of whom to contact to resolve a problem. A casehandler who understands the system may be able to assist the client with a simple phone call. The casehandler serves as a facilitator who can open doors for an individual client who does not know how to proceed, distrusts bureaucracy, or has difficulty articulating a problem.

Informal representation exists on a continuum with formal adversarial representation, that may be undertaken if informal efforts fail. Informal intervention on behalf of clients should not become an ineffectual pattern of response to problems that pervasively affect many clients.

Effective non-adversarial representation requires an awareness of developments in the local community that affect clients. Casehandlers should be familiar with the legal environment and key individuals who are involved with agencies and organizations that interact regularly with clients.

Topic Heading: Negotiations

Standard 3.7

NEGOTIATIONS SHOULD BE PLANNED AND CONDUCTED ACCORDING TO A THOROUGH ANALYSIS OF THE FACTS AND LAW RELATED TO THE MATTER AND SHOULD BE CONDUCTED WITH AN ADVERSE PARTY SO AS TO FURTHER ACCOMPLISHMENT OF THE CLIENT'S OBJECTIVES. A FORMAL AGREEMENT WITH THE ADVERSARY SHOULD BE ENTERED INTO ONLY WHEN THE AGREEMENT IS SPECIFICALLY AUTHORIZED BY THE CLIENT.

Commentary:

Negotiation is a representation function that arises in a variety of contexts. As with other forms of representation, the basic test of the appropriateness of negotiation is whether it may achieve the client's objective without unacceptable risks.

In all cases, negotiations must be planned and conducted according to a thorough analysis of the facts and law related to the legal matter. Before undertaking any negotiation, the casehandler should seek to know:

- the strengths and weaknesses of the positions of both the client and the adversary,
- the probable overlap between the range of settlements acceptable to each party,
- the client's opening position and potential fall back positions, and
- the points of leverage that will dispose the client, the adversary, or the casehandlers for either side to reach agreement, including the personal, nonlegal considerations motivating each participant.

The appropriateness and timing of negotiation are particularly important in legal matters that may be subject to litigation. They should be considered as part of an overall litigation strategy that is based on a thorough analysis of the facts and the law and an evaluation of the circumstances of the client and the adversary. Negotiation can be a cost effective means to achieve a client's objective and generally should be attempted first, unless to do so would jeopardize the client's interests.

There are circumstances when negotiation in the context of potential litigation may appropriately result in compromise that achieves the client's objectives. Pre-litigation negotiation is most likely to have positive results if the client's case is particularly strong or the risk of the lawsuit to the adversary outweighs the cost of pre-litigation settlement. In other circumstances, negotiation prior to or early in litigation may be useful to obtain information about the opponent's case and potential strategy and to test the adversary's apparent resolve.

There are circumstances where negotiation is not appropriate, at least not until litigation has been filed and the client is afforded the protection of the court. Such circumstances include situations in that:

- Notification of a potential lawsuit may subject a client to physical abuse or other retaliation from the adversary;
- Premature notification of the intent to sue may cause a defendant to leave the jurisdiction or to transfer assets in anticipation of adverse ruling from the court;
- An immediate court order is necessary to protect the client's right or interest;
- A client is seeking relief that cannot be legally obtained through compromise with the adversary. For example, relief may depend upon resolving the constitutionality of a statute and the defendant may not have the authority to admit its illegality.

Negotiation must not substitute for forceful representation that could achieve much more for a client, if the client chooses. Casehandlers must not resort to negotiation in order to avoid having to pursue a more time-consuming and challenging strategy that may better serve the client's interests.

Negotiations Should Reach a Formal Agreement Only When Specifically Authorized by the Client.

Client authorization to negotiate is not authorization for a final agreement. The casehandler must seek specific client approval before a final agreement or settlement is offered or accepted. (See Rule 1.2(a), Mississippi Rules of Professional Conduct). At the outset of negotiations a client can identify a range of options that the casehandler is authorized to accept, or the client may withhold authorization until there is an opportunity to review each offer. The client and casehandler should determine that approach will work best, given the particular circumstances of the case.

The final agreement should be reduced to a clear, formal written statement that covers all material issues and enforcement problems. Where appropriate, the agreement should be self-executing or should provide for formal enforcement in the event of non-compliance.

The casehandler should consider drafting the agreement so that minor differences may be resolved in favor of the client. The casehandler should understand, however, that any ambiguities in the agreement will generally be resolved against the party that authored the document and should give careful consideration to how wording may affect the client's overall interests.

At times casehandlers may succeed in negotiating a possible settlement that, in their professional judgment, represents the most that could be achieved for the client even if the matter proceeded to trial. In such circumstances if a client should unreasonably withhold consent, the casehandler may be put in the position of having to devote substantial resources to further

representation that will be futile or subject the client to unwarranted risks. In such circumstances, if consistent with the casehandler's ethical obligations and permitted by the court (when required), the casehandler may justifiably withdraw from representation with the prior approval of the Executive Director or the Director's designee.

Topic Heading: Litigation - Strategy

Standard 3.8-1

IN MATTERS INVOLVING LITIGATION, A CLEAR, LONG RANGE STRATEGY FOR PROSECUTION OR DEFENSE OF THE CLIENT'S CLAIM SHOULD BE DEVELOPED, AND SHOULD BE PERIODICALLY REVIEWED IN LIGHT OF NEW DEVELOPMENTS IN THE CASE AND IN THE GOVERNING LAW.

Commentary:

Litigation should be carefully and thoughtfully planned. Standards generally applicable to assessment and planning of all legal matters should have been employed by the casehandler and client in reaching the decision to litigate and should continue to guide the planning of litigation strategy. Development of an overall strategy for prosecution or defense of the client's claim should begin well before pleadings are filed. Legal research and factual investigation should have been sufficient to permit the casehandler to assess the strengths and weaknesses of the case.

The casehandler should understand how litigation will serve the client's objective. Timing of significant steps in the litigation should be carefully planned and, to the extent it can be controlled by the casehandler, should be set for maximum advantage to the client. The plan should be periodically re-assessed as the case progresses.

Long-range strategy planning should include the following:

- identification of facts that must be obtained through discovery and other means,
- identification of the legal issues involved to be researched, if necessary,
- assessment of the adversary's probable response to the client's claim and how it may be countered,
- an estimate of resources necessary and available to pursue the client's objective, and
- an estimate of the costs to the adversary and their possible impact on the willingness to compromise in favor of the client.

The casehandler should proceed so as to be prepared if the client's claim or defense has to be established in a full hearing, and should base a long-range strategy on a realistic evaluation of likely success at that level. Frivolous claims or defenses should not be asserted with the

underlying hope that the adversary will settle or that the matter can be delayed indefinitely. This is unethical, and seldom is successful. (See Rule 3.1, Mississippi Rules of Professional Conduct).

Legal matters that may be appealed should be identified early to ensure that a sufficient record is made from the outset. If appellate review is likely, casehandlers who will handle the case at each level should participate in developing strategy, if practicable.

Topic Heading: Litigation - Pleadings

Standard 3.8-2

PLEADINGS SHOULD BE DRAFTED SO AS TO PRESERVE AND ADVANCE THE CLIENT'S CLAIM IN ACCORD WITH THE REQUIREMENTS OF APPLICABLE LAW.

Commentary:

Generally, pleadings should be filed only after the casehandler has completed sufficient research and factual investigation to determine the most effective legal argument and the basis for the legal theory on which the client's position rests, unless immediate action is necessary to protect the client's health or safety or to safeguard important rights.

All elements of pleadings should be thoughtfully considered for their strategic and tactical impact on the case. Among other things the following matters should be considered:

The choice of parties should be based on their necessity to the case and their likely impact on such matters as the effectiveness of discovery or the breadth of available relief.

- The choice of forum should take into consideration jurisdictional limitations and the discretion of the forum to refuse the case.
- The choice of claims for relief or defenses should take into account their import to overall strategy; potential impact on the court at trial, in negotiation, and on appeal; problems of proof; and the areas of discovery open both for the client and the adversary.
- The choice of remedies should be made from a broad range of available relief.
- If, after discussion with the client, a decision is reached in which the client foregoes an available cause of action, that decision must be confirmed in a letter to the client.

Pleadings should clearly set forth all necessary elements of the case required by applicable law. They should be typed neatly and correctly in compliance with pertinent court rules and should be filed in a timely manner.

All non-routine pleadings must be reviewed by a supervisor or management designee, or Director of Litigation prior to filing and a note that the pleadings have been reviewed should be entered into the case activity log. Copies of all pleadings should be placed in the file. A copy must either be mailed to the client or the client must be mailed a letter describing the pleading, with an offer to mail it to the client.

Topic Heading: Litigation - Motions

Standard 3.8-3

MOTIONS SHOULD BE CONSIDERED TO PROMOTE THE SUCCESSFUL, EXPEDITIOUS AND EFFICIENT RESOLUTION OF THE LITIGATION IN THE CLIENT'S FAVOR.

Commentary:

Motion practice in each litigated case should be planned with regard to the potential uses of motions:

- as procedural vehicles by which to reach and resolve the substantive issues in a case;
- to control the pace and direction of litigation and to maintain effective pressure on the adversary; and
- to protect the client's interest and to put the case in a more favorable posture.

All motions and responses should be well researched and cogently argued, with a recognition of the fact that motions may educate the court regarding the factual and legal basis for the case. The specific strategic purpose of each motion should be clear. Motions filed for frivolous or insufficient reasons are improper.

Topic Heading: Litigation - Discovery

Standard 3.8-4

FORMAL DISCOVERY SHOULD BE UTILIZED WHEN APPROPRIATE TO THE CASE, SHOULD BE THOROUGHLY PREPARED, AND SHOULD SEEK TO OBTAIN NECESSARY INFORMATION IN A TIMELY MANNER AND IN A USEFUL FORMAT.

Commentary:

Formal discovery is an essential method for effective fact-finding and should be routinely used in contested cases, unless there is a specific reason not to do so.

Litigation strategy should include a discovery plan that identifies facts and information that must be obtained and their probable source. The client should be consulted, particularly with regard to potential discovery that may cause discomfort or inconvenience to third parties. The casehandler should use the least costly effective method to obtain the needed facts. Approval by the Executive Director or Designee is necessary for use of litigation funds.

Non-routine discovery should be reviewed by a supervisor or management designee prior to filing. Discovery activities, including written outlines of deposition questions, should be entered into the case activity log and copies of all discovery documents should be placed in the file.

The casehandler should establish a tentative time frame for pursuing discovery. Generally, it should be undertaken as soon as possible to assure that all pertinent facts are obtained well in advance of trial, unless it is delayed for strategic reasons to maximize the possibility of settlement or to avoid premature disclosure of litigation strategy.

Discovery should be carefully prepared so that it elicits unambiguous responses to the questions that are asked. Information obtained should be thoroughly and thoughtfully analyzed to permit follow-up to clarify ambiguities and to pursue new avenues of inquiry that may be opened.

Responses to an adversary's discovery efforts should be prompt and straightforward. Answers should be honest and responsive to the question asked, but they should be carefully and thoughtfully prepared to prevent inadvertent, damaging disclosures and admissions.

Topic Heading: Litigation - Trial preparation

Standard 3.8-5

TRIAL PREPARATION SHOULD BE SUFFICIENTLY THOROUGH SO THAT THE ATTORNEY IS ABLE TO ANTICIPATE DEVELOPMENTS AT TRIAL AND, TO THE MAXIMUM EXTENT POSSIBLE, INFLUENCE ITS COURSE.

Commentary:

Trial or hearing preparation should be sufficiently thorough for the advocate to exercise maximum control over the course of the proceedings in the courtroom.

Prior to trial or hearing each casehandler shall:

- Review all discovery and documentary evidence to be used at trial. Documents obtained and answers provided in discovery should be indexed and appropriate portions selected for trial.
- Prepare a witness list and develop a schedule for serving subpoenas and for other means of assuring the availability of evidence.
- Develop a written outline of elements and the necessary proof that includes anticipated evidentiary problems.
- Develop written outlines of direct examination, of cross examination and of opening and closing arguments.
- Prepare witnesses by explaining the trial or hearing procedures and by reviewing the witnesses' testimony and by explaining what the casehandler is attempting to prove.
- Prepare exhibits that will be introduced at trial or hearing.
- Review the law and bring it to the trial or hearing in a form that can be referred to as appropriate.
- Draft and submit legal memoranda, as appropriate.
- Draft a post hearing memo to the file that outlines the advocate's impression of the trial or hearing, important trial or hearing developments and any information that may be relevant if the case is later considered for appeal.

The preparation for all non-routine trials and hearings should be reviewed with a supervisor or management designee.

Topic Heading: Litigation - Trial and hearing presentation

Standard 3.8-6

ALL MATTERS SHOULD BE PRESENTED IN A MANNER THAT IS APPROPRIATE TO THE RULES, PROCEDURES AND PRACTICES OF THE TRIBUNAL, AND THAT REFLECTS THOROUGH AND CURRENT PREPARATION IN THE FACTS AND THE LAW.

Commentary:

The keys to effective trial advocacy are trial preparation, anticipation and presentation. The litigator should be thoroughly trained in the effective use of trial skills and should fully understand rules of evidence, procedure, and local practice. Trial skills include examination of

witnesses, oral argument to the judge and jury, jury selection, introduction of evidence, and preservation of the record.

The casehandler should also be fully familiar with all available relevant facts and legal issues and should be fully prepared to present forcefully and cogently all legal arguments that support the client's position. Fully prepared casehandlers should have a clear sense of the version of the facts to be presented to the judge and jury and how they will be introduced. They should also have a clear sense of the flow of the trial and should determine the timing and sequence of presenting testimony and other evidence so that the judge and jury have a compelling, cogent picture of the client's case. Witnesses should be thoroughly prepared to assure they can recall important facts about which they will testify and to reduce any anxiety they may feel about the trial.

The casehandler should be able to anticipate factors that will affect the outcome of the trial. The casehandler should know how damaging testimony will be countered or rebutted and what arguments will be used to make the client's version of the facts more credible. Disputes regarding the admissibility of evidence should be anticipated and the arguments for admission or exclusion should be at hand.

Topic Heading: Litigation - Enforcement of judgments

Standard 3.8-7

WHEN A FAVORABLE JUDGMENT, SETTLEMENT, OR ORDER IS OBTAINED, REASONABLE STEPS SHOULD BE TAKEN TO ENSURE THAT THE CLIENT IS ABLE TO RECEIVE THE BENEFIT THUS CONFERRED, UNLESS A PRIOR AGREEMENT HAS BEEN ENTERED INTO WITH THE CLIENT THAT THE PROGRAM WILL NOT ASSIST WITH THE ENFORCEMENT OF THE JUDGMENT, SETTLEMENT, OR ORDER.

Commentary:

To the extent that it is consistent with the agreement reached with the client at the outset of the representation, the casehandler should take reasonable steps to assure that the adversary complies with the order, judgment, or settlement. Enforcement strategies should be part of long-range case planning from the outset of any litigation, including consideration of the predictable costs of enforcement. The relief sought in pleadings and at trial should be structured with an eye to enforcement and with specific plans for follow-up.

If the program declines to represent the client in enforcing the judgment or order, the client should be advised regarding the steps to take to seek enforcement.

In complex matters, in which it can be foreseen that enforcement of compliance will be a costly, long term endeavor beyond the resources of the program to pursue, the casehandler should, by prior agreement at the onset of the representation, establish with the client an understanding of the limits on what the program will undertake. (See Rule 1.2(c) of the

Mississippi Rules of Professional Conduct). If otherwise consistent with the ethical duty owed to the client, and upon approval of the Executive Director or designee, a casehandler may withdraw from representation if the continued representation will impose an unreasonable financial burden.

Topic Heading: Litigation - Preservation of the record for appeal

Standard 3.8-8

A CASEHANDLER SHOULD REMAIN AWARE OF POSSIBLE FACTUAL AND LEGAL BASES FOR AN APPEAL FROM AN ADVERSE JUDGMENT OR RULING, AND SHOULD MAKE A DELIBERATE DECISION WITH APPROPRIATE CLIENT PARTICIPATION AS TO THE NEED TO PRESERVE SUCH ISSUES FOR APPEAL IN LIGHT OF THE OVERALL LITIGATION STRATEGY.

Commentary:

Effective appellate work begins with initial case planning and continues throughout the case. Even though only a small percentage of cases are subject to appellate review, all cases should be treated as if they may be appealed. Casehandlers must create a record at the trial or hearing level that will sustain positions taken on appeal. They should anticipate factual and legal issues that may be important upon review and should assure that they are raised properly and in a timely manner.

Topic Heading: Litigation - Appellate practice

Standard 3.8-9

WHEN THERE IS AN ADVERSE APPEALABLE JUDGMENT OR ORDER, A DECISION WHETHER TO APPEAL SHOULD BE MADE IN ACCORD WITH THE PROGRAM'S POLICY REGARDING APPEALS. THE DECISION SHOULD BE BASED ON:

- 1. THE MERITS OF THE CLIENT'S APPEAL;**
- 2. PROGRAM PRIORITIES AND AVAILABLE RESOURCES; AND**
- 3. THE POTENTIAL BENEFITS AND RISKS OF PURSUING THE MATTER.**

THE CLIENT SHALL BE ADVISED AT THE OUTSET OF THE REPRESENTATION THAT PROSECUTION OR DEFENSE OF AN APPEAL BY THE PROGRAM IS NOT AUTOMATIC. IF THE APPEAL IS PURSUED IT SHOULD BE PROSECUTED OR DEFENDED WITH ALL DUE DILIGENCE.

Commentary:

Clients must be advised at the outset of representation that appeals are not automatic and that a separate decision on whether to represent the client on appeal will be made, if necessary. In any event, the client should be advised of any right to appeal and of the steps that need to be taken to protect appeal rights.

When a client requests an appeal that the casehandler believes to be appropriate, a memorandum should be prepared by the casehandler and submitted to the Executive Director, or the Director's designee, for review and approval in accord with the program's policy as adopted by the Board of Directors. A decision to prosecute or defend an appeal will be based on the following criteria:

- the client's desire to proceed,
- the likely outcome on appeal,
- the potential benefit and risk to the client,
- the resources of the program required for prosecution of the appeal, and
- the relationship of the issue to established priorities.

A case may not be appealed without the client's specific authorization. A client's desire to appeal, however, does not automatically require that the program pursue the matter.

Casehandlers Should Meet the Standards of Practice at the Appellate Level

Appellate advocacy requires particularly careful research and cogent written and oral argument. Appellate courts subject legal argument to rigorous and probing analysis. Appellate judges may have significant resources in the form of law clerks and assistants to research and analyze in depth the legal theories that are presented. Some issues may be more thoroughly analyzed on appeal than at trial because of their particular significance to the appeal. In addition, new legal issues may arise regarding the authority and jurisdiction of the appellate court. It is advisable, therefore, that briefs and other memoranda be reviewed by another attorney prior to their submission to the Court. Similarly, moot court review of oral argument can significantly improve their quality.

Appellate courts strictly enforce their rules of procedure and practice. Many court rules of procedure are jurisdictional and failure to comply may be fatal to pursuit of the client's claim. Casehandlers should be fully aware of all deadlines for filing notices of appeal, motions, briefs, and abstracts and transcripts of the record. They should also know the requirements regarding form and style of briefs and other documents.

Topic Heading: Adjudicatory administrative practice

Standard 3.9

REPRESENTATION OF CLIENTS IN ADJUDICATORY ADMINISTRATIVE HEARINGS SHOULD BE EFFECTIVELY CARRIED OUT IN A MANNER APPROPRIATE TO THE PROCEDURES AND PRACTICES OF THE HEARING TRIBUNAL AND SHOULD MEET THE STANDARDS SET FORTH IN STANDARD 3.8-1 TO 3.8-9, AS APPROPRIATE.

Commentary:

Casehandlers are expected to approach administrative hearings with the same dedication to high quality legal work that characterizes all litigation efforts. The client's case should be thoughtfully and clearly presented. The casehandler should be fully familiar with all the facts and law in the case, including those the adversary will present. Adverse facts and law should be anticipated and countered. The casehandler should make as complete a record as necessary for possible review by a court or higher tribunal.

The casehandler should thoroughly understand hearing practice before the agency. Although adjudicatory administrative hearings generally do not offer the same opportunity for formal discovery as is available in judicial proceedings, nevertheless, casehandlers must obtain as much information as possible from the adversary.

The casehandler should cogently present the legal basis for the client's claim in every case and should preserve the record for later review, if necessary.

Topic Heading: Utilizing all forms of representation

Standard 3.10

TO THE EXTENT THAT THEY ARE ALLOWED BY LAW AND ARE CONSISTENT WITH CLIENT OBJECTIVES, CASEHANDLERS SHOULD UTILIZE ALL FORMS OF REPRESENTATION INCLUDING ADMINISTRATIVE RULE-MAKING, LEGISLATIVE REPRESENTATION, COMMUNITY LEGAL EDUCATION AND ECONOMIC DEVELOPMENT.

Commentary:

Casehandlers at MCLS are expected to consider all appropriate forms of representation in seeking their clients' objectives. Because of legislative and regulatory restrictions on the exercise of some modes of representation, casehandlers should conform to program policies regarding administrative rule-making and legislative representation.

Administrative representation.

Representation of clients before administrative agencies regarding the adoption of rules, regulations, and orders of general application can be an efficient way to address problems that affect clients. When such representation is undertaken, it should be guided by the following considerations. Representation in administrative rule-making should be forceful and affirmative. Casehandlers should not be limited merely to reacting to rules proposed by others but should consider presenting reasonable alternatives that assert clients' interests. When effective representation of a client requires it, a casehandler may properly initiate proposed rule changes that achieve the client's objective.

Casehandlers may advise clients of matters affecting their interests that are being considered by relevant administrative agencies. If an administrative agency or one of its officials requests that the program comment on a proposed rule or order, it may do so if the matter affects a program priority.

Legislative representation

The legislative process is an essential part of the legal system. At times, it may present the most efficient way to represent the interests of clients. Attorneys have a special role when representing clients' interests before legislative bodies and in improving the administration of the system of justice. (See Rule 3.9, Mississippi Rules of Professional Conduct).

Effective representation of clients before the legislature involves the same lawyering skills as representation in judicial forums, including careful fact-gathering and legal analysis, as well as direct advocacy of the client's interests. An effective legislative casehandler should understand and operate within both the formal and the informal decision-making processes and should interact well with all of the actors involved. A casehandler appearing before a legislature should comply with the laws pertaining to the registration of lobbyists, if applicable.

Community legal education

Community legal education linked to the program's overall legal work effort may be a cost effective way to address client needs. A casehandler who perceives a need for community education should bring the matter to the attention of the supervisor or management designee. If community legal education is undertaken, however, it is valuable only if it actually conveys the desired information to clients and others whom it is designed to teach. The following factors should be considered in choosing a particular community legal education technique:

- the literacy and sophistication of the client population,
- the predominant language or languages used by clients,
- the geographic dispersion of clients in the service area,

- available resources, including its own staff and available private casehandlers as well as public service time or space on television or radio stations and other media, and
- the skills or information being conveyed.

Economic development

Many common legal problems of clients arise from the lack of services to meet their needs. Frequently the required services can be provided through the creation of organizations, incorporated or not, that are designed for that purpose. Representation of clients in the creation of such organizations is sometimes referred to as economic development,

A decision to undertake economic development involves a significant resource allocation question and should be made in the context of the program's planning efforts and priority setting. Such representation may include advice and counsel on the formation and operation of enterprises, representation on issues related to incorporation and taxation, and negotiation and drafting of loan agreements, leases and contracts. Economic development presents unique problems of resource allocation, since it may not represent a high volume demand on program resources and may require casehandlers whose skills are not readily transferable to other areas of program representation.

Topic Heading: Termination of representation

Standard 3.11

REPRESENTATION OF A CLIENT MAY BE TERMINATED WITH THE APPROVAL OF THE CASEHANDLER'S SUPERVISOR OR MANAGEMENT DESIGNEE WHEN ONE OF THE FOLLOWING CRITERIA HAS BEEN MET:

1. THE CLIENT'S OBJECTIVE HAS BEEN MET, OR FURTHER REPRESENTATION WILL NOT BENEFIT THE CLIENT COMMENSURATE WITH THE RESOURCES REQUIRED;
2. THERE HAS BEEN A FAILURE OF THE CLIENT TO COOPERATE WHICH PREVENTS THE EFFECTIVE REPRESENTATION OF THE CLIENT;
3. UPON WITHDRAWAL BY THE CLIENT;
4. IT HAS BEEN DETERMINED THAT THE CASE HAS NO MERIT;
5. A SUBSTITUTION OF COUNSEL HAS BEEN DULY FILED AND APPROVED;

6. THERE HAS BEEN A CHANGE IN THE CLIENT'S ELIGIBILITY AND WITHDRAWAL IS CONSISTENT WITH THE PROGRAM'S ETHICAL RESPONSIBILITIES TO THE CLIENT;
7. THERE IS A CONFLICT OF INTEREST THAT ETHICALLY PROHIBITS FURTHER REPRESENTATION.

Commentary:

As with the beginning of representation, it is important that there be a clear understanding regarding the termination of each case. The client should be aware that the program's and the casehandler's responsibility for the matter has ended. Clients should also be informed of any further action that is necessary by them to protect their interests. For this reason, MCLS requires written confirmation of the termination of the attorney/client relationship and that the termination conform to the guidelines set forth in this Standard.

When representation has been terminated, the case should be closed in accordance with program procedures for case closure. It is important that cases be closed in a timely manner in order for MCLS to keep accurate records of the active caseloads of casehandlers and to prepare accurate statistics for program funding sources.